

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RANDAL WARDLE

Plaintiff,

VS.

TIMBERLAWN MENTAL HEALTH
SYSTEM

Defendants.

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NO. 3-05-CV-0865-N

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

This is an unspecified civil action brought by Plaintiff Randal Wardle, appearing *pro se*, against the Timberlawn Mental Health System. In response to a *Spears* questionnaire, plaintiff states that he did not intend to file this action in federal court. Instead, plaintiff advises that he sued this defendant in Texas state court. The court treats this response as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1).


Rule 41(a)(1) provides that "an action may be dismissed by the plaintiff . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs . . ." FED R. CIV. P. 41(a)(1). This action was filed on April 26, 2005. Defendant has not been served with process or entered an appearance. Therefore, plaintiff should be permitted to dismiss his complaint.

RECOMMENDATION

Plaintiff's motion to dismiss should be granted and this action should be dismissed without prejudice.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: June 22, 2005.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE